

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 1088

Introduced by Senator Bowen

February 22, 2005

An act to add Section 216 to the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 1088, as amended, Bowen. Family law: motions and orders.

Under existing law, the rules of practice and procedure applicable to civil actions generally apply to family law proceedings, except to the extent that any other statute or rules adopted by the Judicial Council provide applicable rules. Existing law prohibits ex parte communications involving certain administrative proceedings.

This bill would require the Judicial Council, by March 1, 2006, to adopt a rule of court concerning ex parte communications between court-appointed mediators or evaluators and the court, and between court-appointed mediators or evaluators and any party to an action, any attorney for a party to an action, or an attorney appointed by the court to represent a child, as specified.

~~Existing law provides for ex parte applications, motions, restraining orders, and emergency protective orders in family law proceedings.~~

~~This bill would express the intent of the Legislature to enact legislation requiring the development of uniform procedural rules governing ex parte applications, motions, and orders in family law proceedings.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. It is the intent of the Legislature to enact legislation requiring the development of uniform procedural rules governing ex parte applications, motions, and orders in family law proceedings.~~

SECTION 1. Section 216 is added to the Family Code, to read:

216. (a) The Judicial Council shall, by March 1, 2006, adopt a rule of court concerning ex parte communications between court-appointed mediators or evaluators and the court, and between court-appointed mediators or evaluators and any party to an action, any attorney for a party to an action, or an attorney appointed by the court to represent a child.

(b) The rule adopted pursuant to subdivision (a) shall provide that, in the absence of a stipulation by the parties to the contrary, there shall be no ex parte communication between the attorneys for any party to an action and any evaluator or mediator, or between an evaluator or mediator and the court, in any proceedings under this code. It shall also provide that, absent stipulation by the parties to the contrary, no attorney or party to an action may initiate oral communication pertaining to the merits of the case with an evaluator or mediator without first providing all parties, including any attorney of record for a child, an opportunity to be present, and that no attorney or party to an action may provide an evaluator with documents pertaining to the case without first providing the attorney for any other party, including any attorney of record for a child, a copy of the document.

(c) The rule adopted pursuant to subdivision (a) shall prohibit ex parte communications between counsel appointed by the court pursuant to Section 3150 and any evaluator or mediator, except where it is expressly authorized by the court or undertaken pursuant to paragraph (5) of subdivision (c) of Section 3151.

(d) The rule adopted pursuant to subdivision (a) shall provide for exceptions to the requirements of subdivisions (b) and (c) in both of the following situations:

(1) To allow a mediator or evaluator to address a case involving allegations of domestic violence.

1 (2) *Where the mediator or evaluator determines that ex parte*
2 *communication is necessary to prevent an imminent risk to the*
3 *child's safety or well-being.*

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